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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JAMES WALTERS, on behalf of
12 himself and those similarly
13 situated,
14 Plaintiff,
15 v.
16 TARGET CORP.,
17 Defendant.

Case No.: 16-cv-1678-L-MDD

**ORDER ON JOINT MOTION FOR
DETERMINATION OF
DISCOVERY DISPUTE
REGARDING REQUESTS FOR
ADMISSION**

[ECF NO. 114]

18 Before the Court is the joint motion of the parties for determination of a
19 discovery dispute filed on October 12, 2018. (ECF No. 114). The dispute
20 concerns whether Defendant need respond to requests for admission allegedly
21 served untimely under the operative Scheduling Order.

22 The Scheduling Order, in relevant part, provides:

23 All fact discovery shall be completed by all parties no later than
24 **September 18, 2018**. “Completed” means that all discovery under
25 Rules 30-36, and discovery subpoenas under Rule 45,1 must be initiated
26 a sufficient period of time in advance of the cut-off date, **so that it may**
27 **be completed** by the cut-off date, taking into account the times for
service, notice and response.

1 (ECF No. 66, ¶ 5). It appears undisputed that Plaintiff served Defendant
2 with requests for admission, under Rule 36, Fed. R. Civ. P., on August 21,
3 2018, which carried a due date of September 20, 2018. (ECF No. 114 at 2).¹
4 Rule 36(a)(3) requires a response be served to a request for production within
5 30 days after being served with the request.

6 Plaintiff seeks to compel Defendant to respond arguing that its service
7 was only 2 days late, Defendant is not prejudiced and, in the alternative, to
8 extend the scheduling order deadline to allow Defendant to respond. (ECF
9 No. 114 at 2-3). Defendant asserts that court-ordered deadlines should be
10 enforced and that Plaintiff has not shown the requisite good cause to modify
11 the scheduling order.

12 The Court agrees with Defendant that deadlines provided either in the
13 Federal Rules, scheduling orders or chambers rules should be enforced. Close
14 enough is not good enough. *See Jones v. Ryan*, No. 07-cv-1019-JMA, 2010 WL
15 3275686 at *1 (S.D. Cal. Aug. 13, 2010). The Court also agrees that
16 modification of the scheduling order, under Rule 16(b)(4), Fed. R. Civ. P.,
17 requires good cause. The standard for good cause under this Rule primarily
18 considers the diligence of the party seeking the modification. *See Johnson v.*
19 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

20 The Court will enforce its deadlines unless convinced by Plaintiff that
21 good cause exists to modify the scheduling order. In that regard, Plaintiff
22 offers that requests for admission serve the cause of advancing the litigation
23 by narrowing issues for trial and avoiding the necessity of proving certain
24 facts. Plaintiff also offers that he has been diligent in pursuing discovery and
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27 ¹ The Court will refer to page numbers provided by CM/ECF rather than original
pagination throughout.

1 there is no prejudice. Plaintiff offers the case of *Estate of Cruz-Sanchez v.*
2 *United States*, No. 17-cv-0569-BEN-NLS, 2018 WL 2193415 (S.D. Cal. May
3 14, 2018), in support of its position that good cause exists here to extend the
4 scheduling order. In *Estate of Cruz-Sanchez*, however, the tardiness in
5 serving requests for production of documents was a consequence of the late
6 discovery of a witness with relevant documents. 2018 WL 2193415 at *2.
7 That is not the case here.

8 On August 22, 2018, the Court denied Plaintiff's motion to amend the
9 scheduling order finding, among other things, that "Plaintiff has failed to
10 demonstrate diligent and timely pursuit of discovery." (ECF No. 82). At that
11 point, Plaintiff was on notice that the Court had issues with Plaintiff's
12 diligence. Plaintiff's assertion that it was delayed in writing the requests for
13 admission because Plaintiff had to wait for responses from certain third party
14 discovery is insufficient as Plaintiff has not provided any specifics regarding
15 when the responses were received and why they were essential to the
16 requests for admission. (ECF No. 114-1 at 4).

17 The Court recognizes and agrees with the utility of requests for
18 admission in potentially narrowing issues and the need for certain proof. The
19 parties again will have this opportunity in advance of their pretrial
20 conference. During the pretrial conference, the district judge will be looking
21 to the parties to simplify the issues and admit and stipulate to facts and
22 documents to avoid unnecessary proof. *See* Rule 16(c)(2)(A) and (C), Fed. R.
23 Civ. P. The late-served requests for admissions can serve as a template to
24 guide those discussions.

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1 CONCLUSION

2 As presented in this Joint Motion, Plaintiff's motion to compel
3 responses to requests for admission is **DENIED**.

4 **IT IS SO ORDERED.**

5 Dated: November 9, 2018

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7 Hon. Mitchell D. Dembin
8 United States Magistrate Judge
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